IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Dr. Suresh Kumar Agrawal
Vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.4731/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 13th December, 2006

REPORTABLE

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.K.S. Yadav, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

BY THE COURT

This writ petition has been filed against the order Annexure-2 dated 05th August, 2003 whereby the petitioner was suspended upon being found involved in a trap case of

Anti Corruption Bureau for offence under Sections 7 and 13 (1) (d) (2) of the Prevention of Corruption Act, 1988.

The petitioner was then holding the post of Additional Chief Medical and Health Officer, Sri Ganganagar (for short 'C.M.&H.O.'). The respondents laid down certain guidelines for keeping a vigil over the Private Ultrasound Centers and Hospitals pursuant to the certain judgments rendered by the Hon'ble Supreme Court. The C.M. & H.O., Shri Ganganagar in that connection by an order dated 16th July, 2003 constituted a committee consisting of three members including the petitioner. The aforesaid committee inspected Shiva Ultrasound Center run by Dr.Pramod Bedi and his wife Dr.Rita Bedi. According to the petitioner, the committee found several irregularities there and prepared a report thereabout. The petitioner claims to have submitted such report to C.M. & H.O., Shri Ganganagar in the evening of 17th July, 2003 but he was refused to accept on the ground that it is not signed by other two members of the committee. In order to give authenticity to his version, the contention of the petitioner is that entry of the

said report in the dispatch register was not possible because in that late hours because office was closed and in these circumstances when C.M. & H.O., Sri Ganganagar returned the report to him, he retained it with himself. A false FIR was lodged against him on the basis of story concocted by Dr. Pramod Bedi in which the petitioner has been falsely implicated. It has been alleged that the petitioner demanded certain illegal gratification from the said doctor. This amount even according to version in the FIR was found to have been placed on the Cooler which was lying in Veranda of petitioner's house. According to the petitioner, the amount of Rs.15,000/- involved in the case was not recovered from the petitioner. While FIR was lodged on 21st July, 2003 the petitioner was placed under suspension 15 days thereafter on 05th August, 2003. The petitioner has been placed under suspension by the respondents on the ground that he was prima facie found indulging in offence under Section 7 and 13 (1)(d)(2) of the Prevention of Anti Corruption Act.

I have heard Mr.K.S. Yadav, learned counsel for the

petitioner and Mr.Rameshwar Dave, learned Dy. Govt. Advocate and perused the material on record.

Learned counsel for the petitioner argued that the petitioner has been falsely implicated in the case inasmuch as the alleged amount has not been recovered from him. A false case was foisted against him. Learned counsel for the petitioner today when the case was take up for arguments filed rejoinder to the reply as well as an application seeking impleadment of the decoy Dr.Pramod Bedi. In the rejoinder it has been asserted that the Dy. Director (Prosecution) has given opinion is in his favour that no case was made out against the petitioner. In the application prayer has been made that suspension of the petitioner being result of the mala fides on the part of Dr. Pramod Bedi, he should be impleaded as a respondent to the writ petition.

Learned counsel for the petitioner argued that Government being his appointing authority, order of his suspension could have been passed only by the Secretary to

the Government in its Department of Medical & Health whereas the impugned order of suspension has been passed by the Dy. Secretary to the Government, Department of Personnel. The order of suspension having thus been passed by an incompetent authority is liable to be declared illegal. He has therefore prayed that the writ petition be allowed and the order of suspension be quashed.

On the other hand, Shri Rameshwar Dave, learned Dy. Govt. Advocate has argued that Anti Corruption Bureau upon receiving complaint against the petitioner thoroughly verified it before proceeding to lay a trap. The complainant produced the tape recorded conversation that took place between the petitioner and the complainant in which demand of illegal gratification in the sum of Rs.15,000/- was made. There are instructions of the Government that those who are found trapped in anti corruption cases, should be placed under suspension. He has in this connection referred to Circular of the department of Personnel, Government of Rajasthan dated 10th August, 2001. He argued that according to Rule 13 of the

Rajasthan Civil Services (CCA) Rules, 1958 suspension can be made not only by the appointing authority or any authority to which it is subordinate but also by any other authority empowered by the Government in that behalf. Rule 4(e) of the First Schedule of Rules of Business relates to the functions of the Department of Personnel (A-III). Sub-clause 1 and 2 thereof deals with the disciplinary matters, according to which it is only Department of Personnel which is the disciplinary authority of the petitioner. He therefore argued that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the record.

Special derive initiated by the respondents to exercise vigil over all Private Ultrasound Centers and Hospitals was to ensure strict compliance with the provisions of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994. This was initiated pursuant to the directions issued

by the Hon'ble Supreme Court and was intended to curb the menace of female feticide. The C.M. & H.O., Sri Ganganagar constituted a committee by order dated 16th July, 2003. The petitioner deputed incharge of that committee under the provision of the Act alongwith two other senior doctors. The petitioner has placed the inspection report which he prepared on 16th July, 2003 alongwith rejoinder. This inspection report is signed by the petitioner alone and not by the other two doctors. The petitioner has not given any explanation whatsoever in so far as this lacuna is concerned, as to why did he not submit the report when C.M. & H.O., Sri Ganganagar on the very same date on which he prepared such report i.e. 16th July, 2003. What however he was stated in the para 6 of the writ petition is that he submitted the report to C.M. & H.O., Sri Gangangar in the evening of 17th July, 2003 but the C.M. & H.O., Sri Gangangar refused to accept the same on the pretext that it was not signed by other two members of the committee. If the report was prepared on 16th July, 2003 and was offered to be given to C.M. & H.O. On 17th July, 2003, the question arise why was it not entered in the dispatch register of the

office of the petitioner. The petitioner however tried to explain away this lacuna by stating that by the time he offered this report to be given to C.M. & H.O., Sri Ganganagar, it was already late in the evening and office was closed and therefore it could not be entered in dispatch register. The fact that it was retained by the petitioner when prepared on 16th July, 2003 but not signed by other doctors and not entered in a dispatch register only provides a corroboration to the allegation of the complainant. The FIR clearly indicate that the Anti Corruption Bureau before laying the trap made thorough verification of the complaint and only thereupon they proceeded in the matter. Application of the petitioner for impleadment of Dr. Pramod Bedi at this belated stage cannot be accepted and is therefore rejected. In so far as the arguments that Deputy Director (Prosecution) has given opinion in his favour that no case against the petitioner was made out also does not furnish any ground to the petitioner to assail validity of the suspension order. In any case expression of opinion by an officer in the working of the government particular as legal advise is not any conclusive proof of the fact as to the acceptance of such

opinion by the government and it is only internal to the functioning of the government.

Lastly, as regard the argument of the petitioner that he being employee of the Medical & Health Department, the Department of Personnel had no competence to place him under suspension, this argument is also noted to be rejected. In the service of government, all those who are members of the state service, administrative department with regard to other establishment matters is only Department of Personnel. Dy. Secretary to the Government is one of the authorized signatory under the Rules of Business and therefore it is only to Department of Personnel which has to take a decision in regard to the matter of suspension of a member of state service. The Dy. Secretary had the requisite legal competence to authenticate the order of suspension of the petitioner on behalf of the government. No fault therefore can be found with the aforesaid order on this count either.

In view of the aforesaid discussion, I do not find any

merit in this writ petition. The writ petition is dismissed and consequently the interim order passed by this Court on 04th December, 2003 is also vacated. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

AKC.